081.

SUPREME COURT OF THE UNITED STATES.

No. 34.

THE BANK OF AUGUSTA, PLAINTIFF IN ERROR,

vs.

JOSEPH B. EARLE.

ERROR TO THE CIRCUIT COURT, U. S. FOR ALABAMA, (S. D.)

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UNITED STATES OF AMERICA.

To Joseph B. Earle, or Williams and Phillips and Gayle Vande Gruff your attornies, greeting:

You are hereby cited and admonished, to be, and appear at a Supreme Court of the United States, to be holden on the second Monday of January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the ninth judicial circuit; wherein the president, directors and Co. of the Bank of Augusta are plaintiffs, and the said Joseph B. Earle is defendant in error, to shew cause, if any there be, why the judgement in the said writ of error should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable John McKinley, one of the justices of the Supreme Court of the United States, this day May, A. D., 1838.

J. M'KINLEY, *Associate Justice of the Supreme Court of the United States.*

Service acknowledged.

WILLIAMS & PHILIPS, *Attornies, for* JOSEPH B. EARLE.

GAYLE & VANDE GRUFF, *for same.*

May, A. D., 1838.

UNITED STATES OF AMERICA.

The President of the United States, to the Judges of the circuit court of the ninth judicial circuit and southern district of Alabama.

Because, in the record and proceedings, as also in the rendition of judgement, in a plea which is in the said circuit court before you, between the president, directors and company of the bank of Augusta, plaintiffs, and Joseph B. Earle, defendants, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appear, and it being fit, if error there be, the same should be duly corrected, and full and speedy justice be done the parties aforesaid. Do command you that if judgement be rendered, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United State, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may couse further proceedings therein, to correct the error, what of right, according to law and the custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of [SEAL.] the said circuit court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued this seventh day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest DAVID FILES.
Clk. So. Dist. Ala.

Circuit court of the United States for the southern district of Alabama.

The President, directors and Company of the BANK OF AUGUSTA
vs.
JOSEPH B. EARLE.

Know all men by these presents, that we, the president, directors and company of the bank of Augusta, Thomas McGran and Franklin C. Heard, are held and firmly bound to the above named Joseph B. Earle, in the sum of five hundred dollars, to be paid to him, his executor, administrators and assigns: for which payment, well and truly to be made, we and each of us bind ourselves, our heirs and assigns, jointly, severally, and firmly, by these presents sealed with our seals, and dated this fifteenth day of May, 1838.

Whereas, the above named president, directors and company of the bank of Augusta, have sued out a writ of error to the Supreme Court of the United States, to reverse a judgement in the said cause, rendered in the circuit court of the United States for the southern district of Alabama.

Now, if the said president, directors and company of the bank of Augusta, shall prosecute their writ of error to effect, and shall pay such damages and costs as the defendant may sustain; if they fail to make their plea good, then this obligation to be void, else to have full force and virtue.

Signed, sealed and delivered in presence of:
J. R. DYSERT

The PRESIDENT, DIRECTORS and CO.
of the bank of Augusta.

By their attorney in fact.

THOMAS McGRAN, [SEAL.]
THOMAS McGRAN, [SEAL.]
F. C. HEARD. [SEAL.]

I, David Files, clerk of the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, do hereby certify that the foregoing, or above, is a true copy of the original bond on file, in my office.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of the [SEAL.] said circuit court, this eleventh day of June, in the year of our Lord one thousand eight hundred and thirty-eight.

DAVID FILES, *Clerk*
Southern District, Alabama.

Pleas had before the Honorable, the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, at a term thereof, begun and held in, and for, the district aforesaid, at Mobile on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before:

Be it remembered, that heretofore, to wit: on the twenty-second day of March, in the year of our Lord one thousand eight hundred and thirty-seven, the president, directors and company of the bank of Augusta, sued out their writ of capias ad respondendum against Joseph B. Earle in the words and figures following, to wit:

THE BANK OF AUGUSTA
vs.
JOSEPH B. EARLE.

United States of America, circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama. The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the body of Joseph B. Earle, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the Hon. the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of April next, to answer unto the president, directors and company of the bank of Augusta, whose president, directors and stockholders are citizens of the State of Georgia, in a plea of trespass on the case to the damage of the plaintiffs, twelve thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the [SEAL.] said circuit court, this twenty-second day of March, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued 22d March, in the year of our Lord one thousand eight hundred and thirty-seven.

Attest: DAVID FILES, *Clerk*
Southern District Alabama.

We acknowledge ourselves security for costs at the instance of the plaintiffs in the above suit.

GORDON CAMPBELL and CHANDLER,
Plaintiff's Attorneys.

MOBILE, Nov. 3d, 1836.

EXCHANGE FOR 6000.

Sixty days after sight, of this first of exchange, (second unpaid, pay to Joseph B. Earle or order, six thousand dollars for value received, and charge the same to account.

(endorsed) FULLER, GARNER & Co.
JOS. B. EARLE.
pr Isaiah D. Fuller.

To MESSRS. B. E. BURLAND & Co.
No. 85, *Maiden Lane, New-York,*

Accepted, November 16th. B. C. BURLAND & Co.
By E. C. ORTIS, *Attorney.*

This action is founded on a bill of exchange, of which the above is a copy protested for non payment.

GORDON, CAMPBELL & CHANDLER,
Plaintiff's Attorneys.

Received 23d March, 1837; not found April 5, 1837.
R. L. CRAWFORD,
U. S. Marshal.
By A. BROOKS,
Deputy Marshal.

And afterwards, to wit, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and thirty-seven, the president, director, and company of the bank of Augusta, their alias writ of capias ad respondendum against Joseph B. Earle, in the words and figures following, to wit:

United States of America, circuit court of the United States, for the ninth judicial circuit, southern district of Alabama, the President of the United States, to the marshal of said district greeting:

You are hereby commanded, as before, to take the body of Joseph B. Earle, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the hon. the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of October next, to answer unto the president, directors, and company of the bank of Augusta, whose president, directors, and stockholders are citizens of the State of Georgia, in a plea of trespass on the case, to their damage of the plaintiffs of twelve thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of April, in their year of our Lord one thousand eight hundred and thirty-eight.

[SEAL.]

Issued, 17th day of April, in the year of our Lord one thousand eight hundred and thirty-seven.

Attest, DAVID FILES,
Clerk Southern District Alabama.

We acknowledge ourselves security for cost, at the instance of the plaintiffs in the above suit.

GORDON, CAMPBELL & CHANDLER.

MOBILE, November 3d, 1836.

EXCH. FOR 6000.

Sixty days after sight, of this first of exchange, second unpaid, pay to Jos. B. Earle or order, six thousand dollars, value received, and charge the same to account.

Endorsed, FULLER, GARNER & Co.
JOS. B. EARLE.

To MESSRS. C. B. BURLAND & Co.,
No. 85, *Maiden Lane, New York, per Isaiah D. Fuller.*

Accepted November 16th.

B. E. BURLAND & Co.
By E. C. ORTIS, *Attorney.*

This action is founded on a bill of exchange, of which the above is a copy, protested for non payment.

GORDON, CAMPBELL & CHANDLER,
Plaintiffs Attorneys.

Received 17th April, 1837; executed September 24th, 1837.

R. L. CRAWFORD,
United States Marshal.
By A. BROOKS,
Deputy Marshal.

And afterwards, to wit: at a term of the court aforesaid, begun and held in, and for the district aforesaid, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-seven, the president, directors, and company of the bank of Augusta, filed their declaration in the words and figures following, to wit:

United States of America, circuit court of the United States, ninth judicial circuit, southern district of Alabama, April term, 1837. The president, directors and company of the bank of Augusta, whose president, directors, and stockholders are citizens of the State of Georgia, by attorney, complains of Joseph B. Earle, who is a citizen of Alabama, in custody, &c. of a plea of trespass on the case; for that, whereas, certain persons using the name and firm of Fuller, Garner & Co. heretofore, to wit: on the 3d day of November, in 1836, at Mobile, to wit: in the district aforesaid, made their certain bill of exchange, in writing, bearing date the day and year aforesaid; and then and there, sixty days after sight thereof, requested B. E. Burland & Co., by the name of Messr. B. E. Burland& Co., No. 85, Maiden Lane, New York, to pay that, his first of exchange, second unpaid, to Joseph B. Earle, or order, six thousand dollars, and charge the same to account, for value received; which said bill of exchange, the said B. E. Burland & Co., upon sight thereof, to wit: on the 16th day of November, 1836, accepted, and then and there delivered the said bill of exchange, to the said defendant, and the said defendant afterwards, and before the payment of the said sum

of money, to wit: on the day and year aforesaid, in the district aforesaid, endorsed and delivered the said bill of exchange, to the said plaintiffs, and the said plaintiffs avers, that afterwards, when the said bill of exchange became due and payable, according to the tenor and effect of the same, to wit: on the 18th day of January, 1837, the said bill of exchange was presented and shewn to the said acceptors, and payment of the same was then and there demanded, according to the tenor and effect of the said bill of exchange; but neither the said acceptor, nor the said defendant, nor any one in his or their behalf, did or would pay the same, and the said bill of exchange was then and there duly protested for non payment; of all which, the said defendant, afterwards, to wit: on the day and year last aforesaid had notice.

By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiffs, the said sum, in the said bill of exchange specified, according to the tenor and effect thereof; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit: on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money, in the said bill of exchange specified; yet the said defendant, though often requested, has not paid the said plaintiffs, the said sum of money, in the said bill of exchange specified, or any part thereof; but the same to pay has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of the said plaintiffs of twelve thousand dollars; wherefore, they sue.

GORDON, CAMPBELL & CHANDLER,
Plaintiff's Attorneys.

And afterwards, to wit: at a term of the court aforesaid, begun and held in, and for the district aforesaid, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor, John McKinley, presiding judge of said court, came the parties, as follows, to wit:

This day came the parties, by their attorneys, and whereupon also came the following jury, to wit: J. Byrnes, Jr., J. Bartlett, Jr., J. J. Morrell, T. B. Childress, T. A. Rogers, H. Stickney, D. Quigley, W. Calvert, E. Chidsey, A. B. Cammack, J. M. Smith, and J. S. McCain, twelve good and lawful men, who being elected, tried and sworn upon their oaths, do say that, we, the jury find for the defendant; it is therefore considered by the court, that the said plaintiffs take nothing by their said writ; that the said defendant go hence without a day, and recover his cost, in this behalf expended; it is ordered by the court that the above order be set aside.

And afterwards, to wit: at the same term of the court aforesaid, begun and held in, and for the district aforesaid, at Mobile, before his honor, John McKinley, presiding judge of said court, the following fact were admitted.

PRESIDENT, DIRECTORS, & Co. of the bank of Augusta. *vs.* J. B. EARLE.	Ninth judicial circuit, southern district, Ala., April term, 1838.

The defendant defends this action upon the following facts that are admitted by the plaintiffs; that plaintiffs are a corporation, incorporated by an act of the legislature of the State of Georgia, and has power usually conferred upon banking institutions, such as to purchase bills of exchange, &c. That the bill sued on, was made and endorsed for the purpose of being discounted, by Thomas McGran, the agent of said bank, who had funds of the plaintiffs in his hands, for the purpose of purchasing bills, which funds were derived from bills and notes, discounted in Georgia by said plaintiffs, and payable in Mobile, and the said McGran, agent as aforesaid, did so discount and purchase the said bill sued on, in the city of Mobile, State aforesaid, for the benefit of said bank, and with their funds, and to remit said funds, to the said plaintiffs.

If the court shall say that the facts constitute a defence to this action, judgement will be given for the defendant, otherwise for plaintiffs, for the amount of the bill, damages, interest, and cost; either party to have the right of appeal, or writ of error to the Supreme Court upon this statement of facts, and the judgment thereon.

WILLIAMS & PHILLIPS,
Attorneys for J. B. Earle.
GORDON, CAMPBELL & CHANDLER,
Plaintiff's Attorneys.

Whereupon the premises being seen and inspected by the court; it seems by the court, that the said purchase was void in laws, and that the said plaintiffs ought not to further, to have, or maintain their aforesaid action thereof against him; wherefore, it is considered by the court, that the said plaintiffs take nothing by their said writ; that the said defendant go hence, without a day and recover his costs.

I, David Files, clerk of the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, do hereby certify, that the above and foregoing four pages, contain a full, true, and perfect exemplification of the record and proceedings of a certain suit, lately pending and determined, in the court aforesaid; wherein, the president, directors, and company of the bank of Augusta were plaintiffs, and Joseph B. Earle was defendant.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal, of the said circuit court, this twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-eight. [L. S.]

DAVID FILES,
Clerk Southern District Alabama.